

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MISSOURI  
EASTERN DIVISION

**MEMORANDUM AND ORDER**

This matter is before the Court on defendant's motion to dismiss and for entry of final judgment. Plaintiff filed this action seeking review of a decision by the Commissioner to reduce her benefits because of a worker's compensation lump sum settlement. Plaintiff alleged that the Commissioner had incorrectly computed the worker's compensation offset, and requested that the offset be recalculated. Defendant now reports that the Commissioner has granted plaintiff's request, and therefore this action is now moot. Plaintiff does not dispute the defendant's assertion.

A case becomes moot when one of the parties loses his personal interest in the outcome of the suit or there is no live case or controversy between the parties. Holstein v. City of Chicago, 29 F.3d 1145, 1147 (7th Cir. 1994). The re-computation of the worker's compensation offset, which is the only relief requested by plaintiff, moots the controversy between the parties. The Court thus lacks subject matter jurisdiction and, as such, it cannot grant the defendant's request for entry of judgment. See Id. at

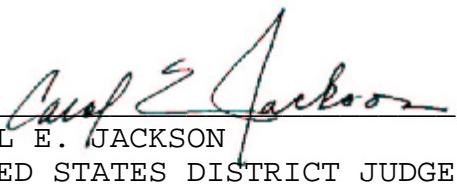
1147; and Wilson v. Secretary of Health and Human Services, 671 F.2d 673, 679 (1st Cir. 1982), citing North Carolina v. Rice, 404 U.S. 244, 245 (1971). Accordingly, the Court will dismiss the action on jurisdictional grounds.

Plaintiff requests an award of costs in the amount of \$350.00, pursuant to the Equal Access to Justice Act, 28 U.S.C. § 2412(d)(1)(B). The Court finds that the defendant's position was not substantially justified, and plaintiff is entitled to recover \$350.00, the cost of the filing fee.

Accordingly,

**IT IS HEREBY ORDERED** that the defendant's motion to dismiss and for entry of final judgment [# 13] is **granted in part** and **denied in part**. A separate order of dismissal will be entered this same date.

**IT IS FURTHER ORDERED** that the plaintiff's motion for award of costs in the amount of \$350.00 [# 14] is **granted**.



CAROL E. JACKSON  
UNITED STATES DISTRICT JUDGE

Dated this 23rd day of July, 2008.